

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA07-632

February 27, 2008

JAMES LOAR
APPELLANT

AN APPEAL FROM ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F505209]

V.

COOPER TIRE AND RUBBER CO.
APPELLEE

REVERSED AND REMANDED

James Loar argues that the Arkansas Workers' Compensation Commission (Commission) erred in denying him additional medical benefits and temporary total disability benefits because he suffered a compensable aggravation. We hold that the Commission erred in denying additional benefits where it acknowledged medical evidence that appellant had preexisting stenosis but failed to address whether appellant suffered a compensable aggravation of his degenerative condition, and where it failed to consider appellant's post-surgical improvement. Accordingly, we reverse and remand for additional proceedings.

The parties stipulated that appellant sustained a compensable injury to his back on April 23, 2005, while working for appellee, Cooper Tire and Rubber Company. There is also no dispute that appellant suffered from preexisting back conditions, such as a compression fracture and mild disc bulging at L1 and multi-level degenerative changes, including spinal stenosis, which caused chronic lower back pain.

After appellant suffered his compensable injury, two magnetic resonance imaging

studies (MRIs) were taken, revealing moderate central stenosis, being greatest at the L3-4 level, multi-level degenerative disease in the mid-thoracic spine, a small central disc protrusion at T7-8, and a small, right paracentral disc protrusion at T9-10. A subsequent myelogram was performed, revealing the old compression fracture at L1 and multi-level degenerative changes, including stenosis, at the L2-L5 levels.

Dr. Reza Shahim, appellant's neurologist, opined on May 16, 2005 that, "[appellant's] lower thoracic pain is due to the recent fall, and although the stenosis is a longstanding disease, he has certainly aggravated this condition from the trauma." Dr. Shahim subsequently opined that appellant's pain was work-related even though no disc herniation was detected by the objective tests.

Appellee sent appellant to Dr. Edward Saer for a second opinion. He assessed appellant with "thoracolumbar back pain" due to a strain or sprain. Dr. Saer opined that appellant did not have any radicular symptoms or any symptoms of neurogenic claudication (which, if present, would indicate that his nerves were affected). Dr. Saer further opined that, "I really do not think that a laminectomy is likely to help him. He does have a congenitally small canal, but I do not see any acute injury that would explain his current symptoms."

On January 5, 2006, Dr. Shahim noted that appellant wished to return to work, even though he still experienced back pain. Dr. Shahim released appellant to return to "full duty" and told him to come back in one month. Appellant attempted to return to his job but was unable to work. He returned to Dr. Shahim on February 2, 2006, and the doctor noted:

Mr. Loar states that his symptoms have worsened after an accident in April of '05. Prior to that, he had chronic back symptoms, but the symptoms were not as severe. His current symptoms are very severe and different from the his previous back symptoms . . . No treatment has been very effective. Since he has lumbar spinal stenosis, I have given him the option of undergoing decompression . . . I don't expect the surgery to eliminate all of his symptoms. He may not be able to return back to his full duty even if his symptoms are improved.

On February 24, 2006, Dr. Shahim performed a lumbar laminectomy and bilateral

foraminotomy at the L2, L3, and L4 levels. His preoperative and postoperative diagnoses were, “Lumbar spinal stenosis at L2-3 and L3-4.” Additionally, in his operative report, Dr. Shahim noted “no evidence of disc herniation.” Appellant’s condition so improved following surgery that he was able to return to work part-time, and he hoped to return full time.

The Administrative Law Judge (ALJ) determined that appellant was entitled to all additional medical treatment received after January 6, 2006, including the surgery, and that additional medical treatment remained reasonably necessary. The ALJ further found that appellant remained within his healing period and was totally incapacitated from earning wages from February 2, 2006, and that he was entitled to temporary total disability benefits from February 2, 2006, through a date yet to be determined.

The Commission reversed, finding that appellant reached the end of his healing period no later than January 5, 2006, and that he suffered no effects from his compensable injury beyond that date. It acknowledged Dr. Shahim’s opinion that appellant suffered a work-related aggravation, that appellant returned to Dr. Shahim for treatment after the doctor released him to return to work, and that Dr. Shahim performed surgery on him. However, the Commission failed to consider appellant’s post-surgical improvement.

Noting that Dr. Shahim found no evidence of herniation during the surgery, the Commission determined that “[t]he evidence does not demonstrate that this degenerative condition was caused by the compensable injury.” Accordingly, it concluded that the treatment appellant received after January 5, 2006, was the result of appellant’s pre-existing degenerative condition. It also concluded that appellant failed to prove that he was entitled to additional medical treatment or continued pain management after January 5, 2006, and was not entitled to temporary total disability benefits beginning February 2, 2006.

When reviewing a decision from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to

the findings of the Commission and affirm that decision if it is supported by substantial evidence. *See Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether we might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Id.* It is the province of the Commission to weigh conflicting medical evidence; however, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* The resolution of conflicting evidence is a question of fact for the Commission. *Id.*

We reverse in this case and remand for additional proceedings, first, because the Commission failed to determine whether appellant suffered a compensable aggravation. In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *See Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004). An aggravation is a new injury resulting from an independent incident. *Id.* An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Id.* An aggravation of a preexisting noncompensable condition by a compensable injury is, itself, compensable. *Id.*

The Commission acknowledged Dr. Shahim's opinion that the compensable injury aggravated the claimant's preexisting stenosis but concluded that "[t]he evidence does not demonstrate that this degenerative condition was *caused by* the compensable injury." (Emphasis added.) However, this finding does not resolve the compensability issue because 1) a degenerative condition, by definition, is not caused by an acute injury, and 2) it fails to account for the possibility that appellant's degenerative condition was aggravated by his compensable injury.

In carrying out its duty to find the facts, the Commission is required to make findings of fact, and those findings must contain all of the specific facts relevant to the issues so that the reviewing court may determine whether the Commission has resolved these issues in conformity with the law. *See Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 57 S.W.3d 735 (2001). We do not review the decisions of the Commission *de novo* on the record or make findings of fact that the Commission should have made but did not. *See Sonic Drive-In, Inc. v. Wade*, 36 Ark. App. 4, 816 S.W.2d 889 (1991). Our function is to review the sufficiency of the evidence to support the findings that the Commission does make, and when it fails to make specific findings on an issue, it is appropriate to reverse and remanded the case for the Commission to make such findings. *Id.* Hence, we reverse and remand for the Commission to determine whether appellant's compensable back injury aggravated his degenerative back condition.

We reverse, secondly, because the Commission failed to address appellant's post-surgical improvement. *See Hill v. Baptist Med. Ctr.*, *supra* (reversing and remanding, in part, because the Commission failed to consider the claimant's post-surgical improvement in determining that his surgery was not reasonably necessary). A claimant's post-surgical improvement is a relevant consideration in determining whether treatment is reasonably necessary, and the Commission may not arbitrarily disregard evidence of the same. *See id.* Thus, on remand, the Commission must consider the fact that appellant improved following surgery, to the point that he was able to return to work part-time.

Finally, we note that, in denying benefits, the Commission relied on the fact that Dr. Shahim reported seeing no herniated discs during appellant's surgery. Given that no doctor opined that a herniated disc was the cause of appellant's symptoms, we are unable to discern how the *absence* of a herniated disc, *ipso facto*, negates the causal connection in this case. Simply put, the presence of a herniated disc is not the only type of objective finding that may

establish a compensable injury or an aggravation.

Reversed and remanded.

ROBBINS and MARSHALL, JJ., agree.